Southwestern Bell Corporation

July 31, 1992

MS. HARMON:

Re: RM-8012

Please find enclosed an original and ten copies, plus the courtesy copies, to be filed with the FCC on Monday, August 3, 1992.

Please call me on Monday to verify that you have received this package, and please contact me again after the document has been filed with the FCC. As usual, please forward one file-stamped copy back to us via overnight mail.

Thank you for your help.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Policies and Rules Pertaining to the Equal Access Obligations of Cellular Licensees	)	RM-8012

COMMENTS OF SOUTHWESTERN BELL CORPORATION ON MCI'S PETITION FOR RULEMAKING

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Dated: August 3, 1992

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SUMMARY

Southwestern Bell Corporation ("SBC") supports MCI's request for rulemaking to deal with the issue of equal access obligations for cellular services on a uniform industry-wide basis. However, SBC strongly disagrees that equal access requirements should be imposed. Rather, the FCC should affirm that no provider of wireless communications services should be subject to equal access requirements, and SBC urges the FCC to support the Bell Operating Companies ("BOCs") in their efforts to have any equal access obligation for cellular and other wireless services removed. SBC also urges the Commission to expand the scope of the requested rulemaking to encompass all providers of wireless communications services including but not limited to personal communications and enhanced and/or digital specialized mobile radio services.

It is imperative that all providers of wireless communications services be afforded the same opportunity to compete on a level playing field and under the same restrictions, or lack thereof, with respect to equal access. The industry-wide imposition of equal access requirements, advocated by MCI, benefits only MCI and other interexchange carriers to the detriment of both the public and competition in the cellular industry.

The MFJ equal access requirements which have been interpreted to apply to the BOCs' cellular affiliates keep

the price of interexchange services to cellular subscribers artificially high. The BOCs' cellular affiliates cannot bargain with a particular interexchange carrier for wholesale rates on long distance services, and cellular licensees competing against BOCs who do have the ability to bargain for wholesale prices have little or no incentive to pass all or even most of the related savings along to their customers. The public interest would be better served by allowing all cellular companies to obtain and/or provide low or no cost interexchange services rather than requiring one or more of them to provide access to all interexchange carriers who will then charge full retail long distance rates.

Equal access requirements also bring with them inefficient and arbitrary LATA or other boundary restrictions and the additional regulatory duty of policing boundary waivers and coordinating those waivers with MFJ court waivers for the BOCs. They further raise both the specter of interexchange access tariff filings by all wireless communications providers and the problem of how to recoup the unnecessary expense of conversion to equal access.

Although SBC strongly opposes the imposition of equal access requirements on cellular and other wireless service carriers (whether under the MFJ or pursuant to FCC rule), the ultimate objective should be a level playing

field. Therefore, if the FCC somehow concludes that equal access requirements make sense for the BOC cellular affiliates, it should impose those same requirements on all other wireless communications providers.

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To: The Federal Communications Commission

COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC"), on behalf of its operating affiliates and subsidiaries, submits these comments in response to the Commission's Public Notice issued June 10, 1992 relating to MCI's Petition for Rulemaking in the above matter.[1]

I. INTRODUCTION

In its Petition, MCI has identified a significant problem area in the cellular industry -- the unequal application of equal access requirements on Bell Operating Company ("BOC") and non-Bell Operating Company ("non-BOC") cellular licensees. SBC supports MCI's call for a rulemaking so the Commission can address the questions of equal access and interexchange service for the cellular industry as a whole. However, SBC advocates the removal rather than the imposition of equal access requirements and

[1] Petition for Rulemaking (hereafter "Petition"), filed June 2, 1992.

urges the Commission to participate in, and fully support, the efforts of the BOCs to obtain relief from any existing equal access restrictions on their cellular affiliates.

Southwestern Bell Mobile Systems ("SBMS") and the other BOC cellular affiliates currently labor under the Modification of Final Judgment ("MFJ") interexchange restrictions and equal access requirements in providing cellular service for their subscribers, while their head-to-head competitors in local markets operate without any such restrictions. SBC and the other BOCs are keenly aware of the competitive disadvantages they face as a result of the MFJ. However, in SBC's view, the solution MCI proposes is no solution whatsoever. To the contrary, it is senseless to impose the artificial restrictions of the MFJ on all carriers in the face of the more rational alternative of removing MFJ restrictions from BOC-related carriers to allow them to compete directly and efficiently with non-BOC competitors.

All parties should be able to agree that all cellular providers should operate under the same set of rules with respect to equal access requirements. The question is what those rules should be. SBC submits that the time has come for the BOC cellular affiliates to be free from the MFJ interexchange restrictions and equal access requirements, and that the Commission should support that position both in an equal access rulemaking and before the

Decree Court by supporting the BOC's requests for appropriate waivers from the MFJ. Substantially the same issues raised in this request for rulemaking are already pending before the Department of Justice ("DOJ") as a result of a waiver request filed by the BOCs.[2] The DOJ is currently considering whether to recommend to the Decree Court the elimination of the BOCs' equal access requirements, and would benefit from the Commission's views on the issues of equal access for the wireless industry as a whole.

II. EQUAL ACCESS REQUIREMENTS ARE NOT NECESSARY IN THE CELLULAR INDUSTRY

The equal access obligations currently borne by BOC cellular carriers were purportedly imposed on them by the MFJ. The MFJ, however, resulted from an antitrust suit in which cellular services were never even an issue. Equal access under the MFJ was designed to correct perceived abuses of a landline system of local bottleneck facilities by which the Bell system allegedly discriminated between interexchange carriers on the terms and conditions of interconnection. The Commission's imposition of equal access obligations on non-BOC landline telephone companies was based on similar concerns about local bottleneck facilities. Those concerns simply do not exist in the

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[2]Motion of the Bell Companies for Removal of Mobile and Other Wireless Services from the Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree.

cellular industry because there is no bottleneck or monopoly in the market for radio-based services.

III. EQUAL ACCESS REQUIREMENTS FOR WIRELESS SERVICES ARE NOT IN THE PUBLIC INTEREST

The appeal to MCI and other interexchange carriers of uniformly imposed equal access obligations is clear. Only through an artificial governmentally imposed scheme of "equal access" can all cellular providers be required to provide access to MCI and allow it to charge their subscribers retail prices well above the wholesale price that would be reached in a competitive market in which all cellular providers, BOC and non-BOC alike, could bargain for the most advantageous interexchange price packages possible for their subscribers.

SBC does not deny that the equal access proposal would be a very good thing for MCI.[3] What is good for MCI, however, is not good for subscribers of cellular phone

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[3]In its haste to force its retail rates on the customers of non-BOCs, MCI overlooks the inconsistencies in some of its own positions. For example, it suggests in footnote 2 of its Petition for Rulemaking that public policy considerations favor an equal access policy that would apply when subscribers roam on systems outside their home system. Petition at 5. MCI's desire is to have a customer's call carried by its PIC even when roaming outside its home system. The very capability MCI suggests, which would allow a call to be handled by a subscriber's PIC, is offered by IS-41, automatic call delivery. MCI, however, has opposed the BOCs' request for an MFJ waiver that would allow them to provide this very automatic call delivery service. See MCI Comments, filed February 1, 1991, in Cause No. 82-0192; United States v. Western Electric Co., et al. in the United States District Court for the District of Columbia.

service and is most certainly not in the public interest -- not in this situation at least.

Elimination of equal access requirements and interexchange restrictions from SBMS and other BOCs' cellular affiliates would result in increased competition for long distance service with a resulting drop in the price to subscribers for that service. Cellular providers not subject to the MFJ recognize that clustering (the acquisition of licenses in contiguous service areas and the efficient deployment of cellular switches within those areas) is a key to competitive advantage in the cellular industry, and they have rushed to assemble ever-broadening regional super systems. Report of the Bell Companies on Competition in Wireless Telecommunications Services, 1991 (October 31, 1991) pp. 98-116 (hereafter "Wireless Report") (copy available upon request). Typically, these providers charge their customers a flat rate for calls made within all or a substantial part of a regional cluster. Id. at 158-60. McCaw, for example, offers its customers service throughout the State of Florida at a single "local" price. Id. at 158. Several other companies make similar offers of regional toll-free service. Id. at 158-60.

BOC providers cannot similarly offer regional services now, both because they cannot cross artificial LATA boundaries and because they bear equal access obligations. Under the MFJ, if a BOC cellular subscriber wants to make a

long distance call, the BOC is required to hand that call off to the subscriber's presubscribed interexchange carrier ("PIC"). The subscriber is then billed at the PIC's retail rate for the long distance call and at the BOC's rate for the cellular air time. That is, the BOC carriers cannot purchase interexchange services wholesale from one carrier and pass the resulting savings on to their subscribers in the form of reduced or even non-existent charges for long distance calls.

On the other hand, non-BOC carriers currently have that legal ability and hence a competitive edge. Because the cost of obtaining interexchange connections in bulk is comparatively low, cellular providers not subject to the interexchange and equal access restrictions of the MFJ can easily undercut the combined cellular and retail long distance charges that subscribers of a competing BOC affiliate have to pay. However, they need not pass on to their customers the full savings they can achieve by purchasing interexchange services in bulk because the BOC affiliates are forced to provide access to interexchange services billed by interexchange carriers at full retail prices. Since the BOC affiliates cannot avoid handing off calls to their customers' PICs to carry the long distance portion of their cellular calls and cannot affect the PICs' retail prices charged cellular customers, any cellular provider that competes against a BOC affiliate in a

particular market faces little or no competitive pressure to pass on all or even most of its cost savings to customers. Even if it passes on some of the savings, that non-BOC provider can still charge customers a premium for long distance services at a price that is below a PIC's retail price, thus increasing or maintaining its market share over a competing BOC provider. The end result is that all cellular customers in markets served by one BOC and one non-BOC, or two BOC-affiliated cellular companies, inevitably pay more than necessary for long distance calls.

What is MCI's public interest solution to this discrepancy? To require <u>all</u> carriers, BOC and non-BOC alike, to employ the inefficient higher cost mechanism of handing off all interLATA calls to a PIC, thereby requiring customers to pay for long distance calls at the higher retail rate. Instead of affording all customers the efficiencies and cost savings available when a cellular carrier can subscribe to cut-rate long distance services or install its own long distance facilities on high traffic routes, MCI would impose on customers the dual charge of air time and retail long distance rates in the name of freedom of choice.

But where is the public clamor for this freedom of choice advocated by MCI? Have the customers of non-BOC cellular carriers been lobbying for a choice of long distance carriers for their cellular long distance calls?

Only MCI, and likely other interexchange carriers, consider the "right" to choose an interexchange carrier for cellular service to be a public benefit. In fact, the only benefit is to MCI and the other interexchange carriers. In those areas in which regional service is being provided or in which the carrier is providing a consolidated bill for local and interexchange services, it is unlikely that customers would voluntarily choose to receive two bills -- one for local cellular service and one for the associated interexchange service -- and to pay retail prices for those interexchange services. Freedom to choose service at full retail prices from among multiple carriers[4], without the ability to choose low or no cost service from a single provider with whom the cellular carrier has negotiated a deal (or from the carrier's own low cost system), is not the sort of choice that cellular subscribers are likely to seek or to find in their interest. Moreover, any subscriber who, for some unknown reason, would prefer to pay the higher retail rates of the long distance carrier of his or her own choosing could still do so simply by dialing that carrier's access code via 10XXX dialing.

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[4]SBMS' Dallas market has 27 interexchange carriers from which the customer must select his or her PIC. These same customers, however, are not given the opportunity to choose regional or areawide service to other markets in Texas for one low price because of SBMS' LATA and equal access restrictions. Absent SBMS offering such a choice, there is little pressure on SBMS' competitors to charge much less than full retail prices for interLATA long distance.

Indeed, if MCI's proposal were adopted, customers of non-BOCs would surely object when calls that had been local in nature (primarily because cellular carriers have been buying interexchange services and not passing those charges on to the customer) became long distance calls such that a customer would pay two charges for a single call at a higher total cost. Non-BOC carriers today can send out one bill because they do not have to maintain multiple rating tables in their switch and they can simply act as a conduit for the interexchange charges. It is obviously not in the customer's best interest to receive two bills representing two separate charges for the same call. It is also doubtful that non-BOC carriers, which have been providing a single bill, will want to bear the additional expense of now separately billing or collecting for interexchange services.

IV. LATA RESTRICTIONS ON CELLULAR CARRIERS ARE NOT IN THE PUBLIC INTEREST

MCI's Petition does not address whether it seeks as an adjunct of equal access requirements that the Commission require the non-BOCs to adhere to LATA restrictions in determining the point at which they must make equal access interconnection available to an interexchange carrier. If LATA restrictions are not imposed and some other scheme for determining the mandatory point of interconnection is used, the inherent inequity of imposing the LATA restrictions on only the BOC affiliates remains. On the other hand, imposing artificial LATA restrictions on

all cellular providers makes no more sense than imposing them on BOC cellular affiliates did in the first place, and it creates a host of difficulties.

As the Commission is well aware, LATA lines were not drawn with cellular service in mind and Metropolitan Statistical Area ("MSA") and Rural Service Area ("RSA") lines were not drawn with LATA lines in mind. As a result, there are numerous areas around the country in which a single cellular service area will encompass portions of two or more LATAs. For example, SBMS serves the Washington and Baltimore MSAs -- two MSAs with a LATA boundary in between. Absent an MFJ waiver from the Decree Court, it would be a long distance call today between points in these MSAs. Texas RSA 8 is an example of a single RSA carved up into multiple LATAs -- it has parts of five LATAs within its boundaries. Other examples include Texas RSA 4 (four LATAs) and Illinois 2 (five LATAs). If the operators of these and other similarly situated RSAs were to have equal access obligations imposed on them, would the Commission expect the RSA operator to provide interexchange access in each of the four or five pieces of its RSA? This raises the necessity of a waiver process at the Commission for interLATA service on a case-by-case basis.

Moreover, if all carriers were bound by LATA lines, an inconsistency would arise with respect to the waiver process for provision of a particular cellular

service that "looks" local but crosses a LATA line. Would the Commission set up a separate waiver structure for the non-BOCs, leaving the BOCs again on a different footing requiring waivers from the MFJ court? Will the BOCs be required to obtain both a Commission waiver and an MFJ waiver? How would inconsistencies in waiver grants be resolved? Does the Commission have the time and resources to engage in this kind of policing? Would the Commission assist the BOCs in obtaining MFJ waivers? If it decides to entertain MCI's suggestion of an equal access obligation for all cellular service providers, the Commission should seek comment on these issues.

The Commission has already urged that LATA lines not be applied to cellular service, noting that cellular licensing areas were shaped without regard to LATA boundaries. "[T]here is virtually no competitive risk in making clear that the BOC may engage in the cellular radio business to the same geographical extent as any other entity." FCC Reply on Application of AT&T and BOCs for Approval of LATAs at 4 (Dec. 15, 1982). Consistent with that understanding, the Commission should now support the BOCs in their efforts to obtain a more efficient and competitive environment for radio-based services.

V. ACROSS THE BOARD EQUAL ACCESS REQUIREMENTS WILL UNNECESSARILY INCREASE REGULATION AND COSTS

Another potential ramification of the imposition of uniform and unnecessary equal access requirements is the

increased administrative burden on the FCC of tariff filings by all non-BOC cellular carriers. The Commission currently accepts from the BOCs' cellular affiliates tariff filings relating to interexchange access despite the fact that the BOCs do not charge for interexchange access. SBMS questions whether such filings are in fact required or are even appropriate. If they are required, then the imposition of equal access requirements on the many non-BOC cellular service providers will compel the non-BOCs to file (and the Commission to accept) tariffs on their own interexchange access situations. Thus, in imposing industry-wide equal access obligations, the Commission would be fostering increased regulation rather than competition, and would be simultaneously increasing its own administrative burdens and expenses.

A final factor to consider is the potentially huge expense of conversion to an equal access structure for the numerous non-BOC cellular providers. MCI does not address how those costs might be recouped, and, as previously demonstrated, no overriding public interest concern argues in favor of imposing such costs in the first place. Every dollar spent in an unnecessary conversion to equal access is a dollar that might have been spent on enhancing the provision of wireless services to the public.

VI. THE COMMISSION SHOULD EXPAND THE SCOPE OF THE REQUESTED RULEMAKING

The discussion thus far has centered on BOC and non-BOC cellular licensees engaged in the provision of traditional cellular or mobile radio services. There are also other wireless services to consider. SBC strongly favors the equalization of competitive opportunities in the market place by removing, rather than imposing, equal access obligations. However, any discussion of regulation (whether imposing or removing restrictions) should consider the other radio-based technologies that are developing and that will eventually have the capability of interexchange access. SBC suggests Commission action reflecting a determination that no provider of any radio-based technology need bear the burden of unnecessary equal access obligations. On the other hand, an order imposing equal access obligations on A and B band cellular carriers but not on providers of Personal Communication Services ("PCS") or Enhanced (and/or Digital) Specialized Mobile Radio Services ("ESMRS," etc.), for example, would be unreasonably discriminatory and would fall woefully short of establishing the desired level playing field.[5]

It is significant that AT&T, itself an interexchange carrier, does not represent that it would

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[5]See Comments of Southwestern Bell Corporation, filed June 29, 1990, in File No. LMK-90036; In the Matter of Fleet Call, Inc. For Authority to Assign SMR Licenses and Waiver of Certain Private Radio Service Rules.

offer equal access in the 70 markets in which it seeks a pioneer's preference for PCS. See AT&T's Request for a Pioneer's Preference, filed May 4, 1992 (File No. PP-43; Gen. Docket No. 90-314). This is so despite the fact that the description of AT&T's proposed service is no more or less than a description of cellular service. See id. at 9-11. Disparate treatment of any radio-based services with respect to equal access requirements is anticompetitive and simply does not make sense. The BOCs recognize this in their generic mobile waiver request on file with the DOJ, and the Commission needs to ensure that all such services are uniformly covered by any decision it might make with respect to equal access requirements. Accordingly, in the event a rulemaking is initiated, SBC urges the Commission to expand the scope of such rulemaking to include all other radio-based services beyond those provided by existing A and B band cellular licensees.

VII. EVERY PROVIDER OF WIRELESS COMMUNICATION SERVICES MUST OPERATE UNDER THE SAME SET OF RULES

As stated at the outset, all cellular and other wireless telecommunications providers must be afforded the opportunity to compete under the same set of rules. Therefore, if contrary to SBC's urging, the Commission determines that it does not support the efforts of SBC and the other BOCs to obtain relief for their cellular affiliates from the restrictions of Section II of the MFJ,

then it should, as MCI requests, impose those same restrictions on all cellular carriers and indeed on all providers of competing radio-based services. If the Commission should somehow determine that equal access obligations make sense for the BOCs, it must ultimately conclude that they make sense for the non-BOCs as well. BOC-related cellular carriers operating outside of their telephone affiliate's service area on an A band license look no different in an economic or competitive sense from any other provider of cellular or a competing service, yet they are bound by the restrictions of the MFJ, while their competitors are not. Part of the Commission's mission to foster competition should be to prevent any party in this area from being able to utilize an unfair competitive advantage. Thus, if it is determined that the BOCs should have equal access obligations, so should their non-BOC competitors. Otherwise, the non-BOC competitors will continue to enjoy an unfair competitive advantage solely as a result of the regulatory and legal environment within which they operate and not as a result of their own competitive efforts.

VIII. CONCLUSION

Therefore, SBC joins MCI in its request that the Commission initiate a rulemaking proceeding on the subject of interexchange equal access policies and procedures, though SBC supports elimination rather than imposition of

such restrictions on the whole cellular/wireless industry. SBC further requests that the Commission expand the scope of the requested rulemaking to include all other radio-based services, such as PCS and ESMR.

Respectfully submitted,

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August 3, 1992

CERTIFICATE OF SERVICE

I, Mark P. Royer, hereby certify that copies of the foregoing Comments of Southwestern Bell Corporation on MCI's Petition for Rulemaking have been served by first class United States mail, postage prepaid, on the parties listed below:

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